IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5857 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DECEASED BHALABHAI LALLUBHAI,
THROUGH HIS HEIR & LEGAL REPRESENTATIVE - SUMANBHAI BHALABHAI SOLANKI - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
Shri Jitendra M. Patel for Petitioner(s).
Shri L.R. Pujari, Assistant Government Pleader for Respondent(s) : 1 - 2.
None for Respondent Nos. 3 – 5 though the name of Shri N.M. Pandya is shown in the Daily Board.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/03/2007

ORAL JUDGMENT

The parties are heard.

2. Block No.203 of Village-Kosam, Taluka: Thasra, District: Kheda, admeasuring 5 Acres, 7 Gunthas belonged to certain persons as joint owners. The respondent No.3, Sakarben - widow of Madhabhai Sanabhai, under the law was entitled to 1 Acre 11 Gunthas in her share; she sold her property by a registered Sale Deed dated 28th June, 1971, in favour of one Galabbhai Dabhaibhai. An entry came to be made on 7th November, 1971 in the revenue records evincing that Galabbhai Dabhaibhai had purchased the property.

2.1 On 29th June, 1973, the original petitioner, Bhalabhai Lallubhai (since deceased) purchased 1 Acre 11 Gunthas of land from another co-owner, namely, Dahyabhai Sanabhai, respondent No.5. On 1st January, 1975, the petitioner had purchased land from Galabbhai Dabhaibhai, which Galabbhai Dabhaibhai had purchased from Sakarben. It appears that on an earlier occasion, certain proceedings were started, but, the Deputy Collector, *vide* his order dated 15th May, 1980, was pleased to drop the proceedings, which were initiated under Section 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("the Fragmentation Act" for short) on the ground that the petitioner was possessing the adjoining and contiguous land bearing Survey No.200 admeasuring 1 Acre 27 Gunthas. Some of the co-owners had made an application in the year 1971 itself that the sale made by Sakarben in favour of Galabbhai Dabhaibhai was invalid and was in breach of the provisions of the Fragmentation Act, therefore, the sale was required to be annulled. The Deputy Collector or the competent authority did not process the application and the application remained pending. It appears that almost after a period of 11/12 years, notices were issued to Sakarben and Galabbhai Dabhaibhai that the sale effected in the year 1971was invalid and was in breach of the provisions of the Fragmentation Act, therefore, the same was required to be annulled. It

must be noted at this place that the petitioner, who had purchased the said land on 1st January, 1975, was never issued any notice and the Deputy Collector, *vide* his order dated 24th November, 1983/1st February, 1984, held that the transaction dated 28th June, 1971 made by Sakarben Madhabhai in favour of Galabbhai Dabhaibhai was absolutely invalid. Even at this stage, no notice was issued to the present petitioner, who had become the owner of the property in the year 1975.

2.2 On 19th September, 1993, the Deputy Collector, in the proceedings initiated under Section 9 of the Fragmentation Act, directed the Mamlatdar - Thasra to implement the earlier order dated 24th November, 1983/1st February, 1984. The petitioner thereafter filed a revision before the State Government which came to be dismissed, therefore, the petitioner is before this Court.

3. Shri Patel, learned Advocate for the petitioner, submits that the transaction of the year 1971 could not be set aside in the year 1983/84 and in any case, the proceedings could not be initiated after a lapse of twelve years. Placing his strong reliance upon a judgement of the Division Bench of this Court in the matter of ***Valjibhai Jagjivanbhai vs. State of Gujarat*** [***(2005) 3 G.L.R. 1852***], he submits that if no period of limitation is provided for exercising the revisional powers, then, such powers must be exercised within reasonable time.

4. Shri L.R. Pujari, learned Assistant Government Pleader for the State, on the other hand, submits that the application to challenge the transaction was filed in the year 1971 and as such, it cannot be said that the action was belated. He, however, submits that if no action was taken by the Officer concerned for a period of twelve years and the application remained pending, then, the judgement in the matter of

Valjibhai Jagjivanbhai (*supra*) would not apply.

5. Undisputedly, the land was sold on 28th June, 1971, an entry was made in the very same year. The concerned Deputy Collector did not take any action either on the application alleged to be filed by one of the co-owners or *suo motu* even after gaining the knowledge of the fact that there was an invalid transaction at least for a period of twelve years. If no application was filed and action was initiated after a period of twelve years, then, the judgement in the matter of ***Valjibhai Jagjivanbhai*** (*supra*) would cover the field, but, if the application was filed in the year 1971 and no action was taken on the said application for a period of twelve years, then, the inaction/non-action on the part of the Government Officers would be worse. One cannot ignore the intervening events. If the transaction of 1971 was set aside on the application of one of the co-owners within a period of one year, two years or three years, then, Galabbhai Dabhaibhai would have no occasion to sell the property to the present petitioner. It is the delay on the part of the Deputy Collector and the Government machinery, which led to an impossible situation. If the transaction of 1971 was to be annulled and subsequent transactions generating from the transaction of 1971 were also to be nullified, then, the persons affected by such order of annulment were required to be heard. Unfortunately, the Deputy Collector did not look into the matter, nor issued any notice to the petitioner. The action on the part of the Deputy Collector was patently illegal.

7. In the present matter, as the action was initiated on the application after a period of twelve years, the judgement in the matter of ***Valjibhai Jagjivanbhai*** (*supra*) shall hold the field and this Court would be justified in holding that the transaction dated 28th June, 1971 could not be annulled by the Deputy Collector. The orders dated 24th

November, 1983, 1st February, 1984 and 19th September, 1993 passed by the Deputy Collector and the order dated 6th December, 1995 passed by the State Government are hereby quashed. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**